on the ground that in the latter case the interference was the direct purpose of the act, whereas in the former the purpose was the protection of the local game and the interference was incidental. The language of the court, both in this case and in *Sligh* v. *Kirkwood,* seems to indicate that the term incidental refers, not to the quantum of the interference, but to the primary purpose. If this is the test to be applied, the Indiana law is clearly distinguishable from the Oklahoma law. From the legalistic standpoint, the question would seem to be rather doubtful, with no case directly in point or very close. Language is to be found in the two widely divergent groups of cases which mark the bounds within which the question falls, tending to support the law on the one hand and perhaps to declare it invalid on the other. Inasmuch as the Supreme Court found sufficient merit in the Oklahoma law to result in a split, there would seem to be at least a fighting chance for the Indiana law.

On the economic side, the case for the law may be summed up as follows: The starting point is: The State has the power to regulate the price of coal. In the absence of regulation a certain amount of coal is being supplied to the people of the State at extortionate prices. If the same amount of coal can be obtained at the reasonable price set by the State, the people will be greatly benefited and the people of adjoining States will not be harmed. If coal cannot be obtained at the price set by the State, the law will, of course, be extremely detrimental. Provided the State is to have the power of regulating prices at all, and provided it confines itself to the necessities of the case, why should it not be able to interfere with interstate commerce to that extent. The principle that an otherwise valid exercise of the police power can be sustained, though it incidentally interferes with interstate commerce developed when the conception of the police power was confined to health, morals and safety. Since then the police power has developed considerably beyond that conception. Logically, it follows that the principles which developed in the early conception of the police power and furthered the effectiveness of its exercise should not stand still, but should be extended into new fields when the necessity arises. A. W. B.

VOLUNTARY PAROL TRUST WITH IMPLIED POWER OF REVOCATION.—In the recent case of *Russell's Executors* v. *Passmore,* 103 S. E. 652, in the Supreme Court of Appeals of Virginia, it appeared that the donor had made a voluntary transfer of certain bank stock about six months before his death. Several years later, the donee having died without making any disposition of the stock, the donor's infant children brought suit in the name of their guardian against the donee's executors to establish an alleged secret parol trust of the stock. There were two reputable witnesses who knew something about the transaction. One of them, who was present and participated in the initial transfer of the stock, testified that the stock was to be held "in the event of the donor's death" for the benefit of the donor's eldest son. The other witness, who was the donor's administrator and was present at his death, testified that the donor said a few hours before his death that the

stock was held by the donee for the benefit of the donor's children. There was also testimony by an employee of the donee that the donee had said a few months before his death that he had some money for the donor's children. And it appeared that on three occasions prior to his death the donee had made remittances for the donor's children. On the strength of this evidence, the court held that the original transfer was an executed gift in trust for the oldest son, that this gift was conditioned by an implied power of revocation, and that the original trust was later partially revoked and a different and enlarged trust created for the benefit of all the children.

The implied power of revocation in this case must be supported solely by the testimony of the witness who participated in the initial transfer. The donor's declaration a few hours before death, remittances made by the donee under circumstances which tended to indicate that they were intended for all the children and the employee's testimony as to the donee's admission a few months before death are all inadmissible to show such an implied power. They may be admitted to show that the stock continued to be held in trust, or that the original trust, if revocable, had been revoked and another created in its stead. But they are inadmissible to show that the initial transfer was intended to be revocable under the settled principle of evidence that statements made by the transferrer, after transfer of title, are not receivable as admissions against the transferee. *Tierney* v. *Fitzpatrick*, 195 N. Y. 433; 2 WIGMORE ON EVIDENCE, § 1085. It must be assumed, therefore, that a power of revocation was implied in reliance upon the testimony that the stock was to be held "in the event of the donor's death" for the benefit of the eldest son. The opinion makes it reasonably clear that the revocability of the original trust was based upon this testimony.

As a general rule, a trust once completely and validly created, whether by a simple declaration of trust or by transfer in trust, and whether gratuitous or for consideration, cannot be revoked unless a power of revocation has been reserved. *Viney* v. *Abbott*, 109 Mass. 300; *Ewing* v. *Warner*, 47 Minn. 446; 1 PERRY ON TRUSTS [6th ed.], § 104. There seems, however, to have been a slight reaction at some points from the liberality with which voluntary trusts were formerly enforced. Following *Ex parte Pye*, 18 Ves. 140, there was at first an inclination to torture imperfect gifts into declarations of trust and enforce them as such. *Morgan* v. *Malleson*, 10 Eq. 475. But this inclination was soon repudiated, and it became well settled that an imperfect gift will not be given effect as a declaration of trust. *Cardoza* v. *Leveroni*, 233 Mass. 310; SCOTT'S CASES ON TRUSTS, 151, note. In a few instances voluntary trusts which are formally perfect have been held revocable. In the so-called savings bank trust cases, instead of regarding a deposit in a savings bank in the depositor's name in trust for another as an irrevocable trust, courts have frequently treated it as a tentative trust or trust with implied power of revocation. *In re Totten*, 179 N. Y. 112; *Walso* v. *Latterner*, 143 Minn. 364; 4 MINN. L. REV. 56. See SCOTT'S CASES ON TRUSTS, 224, note. Compare *Cazalis* v. *Ingraham*, 110 Atl. (Me.) 359; 19 MICH. L. REV. 356. This anomalous result seems to be justified, however, if it can

be justified at all, by factors which are more or less peculiar to savings bank deposits in trust. See *Beaver* v. *Beaver,* 117 N. Y. 421, 430-1. Voluntary transfers in trust have been treated as revocable in a number of cases. There have been cases of voluntary settlement or gift in trust without express power of revocation in which the court has seemed to place upon the beneficiary the burden of proving that the donor intended to make the gift irrevocable. See *Couts* v. *Acworth,* 8 Eq. 558; *Everitt* v. *Everitt,* 10 Eq. 405; *Garsney* v. *Mundy,* 24 N. J. Eq. 243; *Rick's Appeal,* 105 Pa. 528. These cases were cases of unusual hardship, however, in which the donor might have been relieved without recourse to so dubious a principle. Compare *Massey* v. *Huntington,* 118 Ill. 80. It has sometimes been said that the omission from a voluntary disposition in trust of a clause reserving a power of revocation raises a presumption that it was omitted by mistake. See *Russell's Appeal,* 75 Pa. 269; *Aylsworth* v. *Whitcomb,* 12 R. I. 298. But such statements are believed to be unsound on principle and opposed to the weight of authority. See *Sands* v. *Old Colony Trust Co.,* 195 Mass. 575; *Souverbye* v. *Arden,* 1 Johns. Ch. 240.

It may be urged, of course, with some plausibility, that the evidence in the instant case, although meager, indicated more than anything else an intention to make a gift in trust for the eldest son at the donor's death in case the donor died without revoking. This construction appeals to the present writer as a very dubious one. Why imply a power of revocation in an executed gift to one to be held "in the event of the donor's death" in trust for another? Nothing is more certain than death. The qualifying clause is an appropriate way of indicating the time at which the beneficiary's interest is to commence. Why attribute to it any greater significance? Compare *Massey* v. *Huntington,* 118 Ill. 80; *Viney* v. *Abbott,* 109 Mass. 300. Probably the case should be viewed as another manifestation of a somewhat curious reluctance to commit irrevocably one who has made a voluntary declaration or transfer in trust. So regarded the principle of the decision seems clearly objectionable. The only authority cited by the Court, *Sterling* v. *Wilkinson,* 83 Va. 791, was really a case of imperfect gift which the court could not perfect after the donor's death, and anything said about implied power of revocation seems to have been mere dictum. Everyone would agree at the present day that equity has taken a sound position in refusing to give effect to imperfect gifts. But has not the pendulum swung too far when revocability is implied as readily as in the instant case? It would be unfortunate if pawnship equity should be permitted to impair the stability of gifts in trust. R. E. G.

ANIMALS—DAMAGES BY TRESPASSING CHICKENS.—P alleged he had a large feed barn, filled with grain, and a garden with growing vegetables, on his lot surrounded by a lawful fence four and one-half feet high, over which some of D's 400 chickens crossed from her adjoining lot, and destroyed grain and vegetables to the value of $600. The trial court sustained D's demurrer. Reversed. *Adams Bros.* v. *Clark* (1920), — Ky. —, 224 S. W. 1046.